

# EXHIBIT 63

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1  
2           IN THE UNITED STATES DISTRICT COURT  
3           FOR THE EASTERN DISTRICT OF VIRGINIA  
4           ALEXANDRIA DIVISION

5           UNITED STATES,                         ) Case No.  
6           et al.,                                 ) 1:23-cv-00108-LMB-JFA  
7   )  
8           Plaintiffs,                             )  
9   )  
10           vs.                                     )  
11   )  
12           GOOGLE LLC,                             )  
13   )  
14           Defendant.                             )  
15   )

16   - HIGHLY CONFIDENTIAL -

17   VIDEOTAPED 30 (b) (6) DEPOSITION OF  
18   UNITED STATES CENSUS BUREAU  
19   through the testimony of  
20   Kendall Oliphant  
21   September 27, 2023  
22   9:39 a.m.

Reported by: Bonnie L. Russo  
Job No. 6097939

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1        Videotaped 30(b)(6) Deposition of 2        United States Census Bureau through the 3        testimony of Kendall Oliphant held at: 4 5 6        Paul, Weiss, Rifkind, Wharton & Garrison, LLP 7              2001 K Street, N.W. 8              Washington, D.C. 9 10 11 12 13 14 15 16 17 18       Pursuant to Notice, when were present on behalf 19       of the respective parties: 20 21 22	1        APPEARANCES (CONTINUED): 2 3        Also Present: 4              Michael A. Cannon, United States Department of 5              Commerce, Chief Counsel for Economic Affairs 6              Sam Whitthorne, DOJ, Paralegal 7              Claire Cushman, DOJ, Paralegal 8              Orson Braithwaite, Videographer 9 10       Also Present Via Remotely: 11              Rachel Zwolinski, United States Department of 12              Justice 13 14 15 16 17 18 19 20 21 22
Page 3	Page 5
1        APPEARANCES: 2 3        On behalf of the Plaintiffs: 4              VICTOR LIU, ESQUIRE 5              KATHERINE CLEMONS, ESQUIRE 6              ALVIN CHU, ESQUIRE 7        UNITED STATES DEPARTMENT OF JUSTICE 8              450 Fifth Street, N.W. 9              Washington, D.C. 20530 10             victor.liu@usdoj.gov 11             katherine.clemons@usdoj.gov 12             alvin.chu@usdoj.gov 13 14       On behalf of the Defendant: 15              MARTHA L. GOODMAN, ESQUIRE 16              ANNELISE CORRIVEAU, ESQUIRE 17              PAUL, WEISS, RIFKIND, 18              WHARTON & GARRISON, LLP 19              2001 K Street, N.W. 20              Washington, D.C. 20006 21             mgoodman@paulweiss.com 22             acorriveau@paulweiss.com	1              I N D E X 2              EXAMINATION OF KENDALL OLIPHANT              PAGE 3              BY MS. GOODMAN                                      10 4              BY MR. LIU    109 5 6 7              EXHIBITS 8 9 10             Exhibit 145    Amendment of                      22 Solicitation/Modification of Contract 11-21-18 11             CENSUS-ADS-0000073778-786 12             Exhibit 146    E-Mail Chain                      28 dated 6-25-20 Attachment CENSUS-ADS-0000668928-941 13 14             Exhibit 147    E-Mail Chain                      36 dated 4-12-18 Attachment CENSUS-ADS-0000475977-018 15 16             Exhibit 148    2020 Census Paid              47 Media Campaign Fact Sheet CENSUS-ADS-0000052132-134 17 18             Exhibit 149    Y&R Invoices                      63 CENSUS-ADS-0000347549-692 19 20             Exhibit 150    Y&R Purchase Orders            78 CENSUS-ADS-0000350928-963

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<p>1        THE WITNESS: There were requests      2        for additional funding as additional work was      3        added to the order.</p> <p>4        BY MS. GOODMAN:</p> <p>5        Q. And were those requests for      6        additional funding approved via e-mail from Ms.      7        Vélez?</p> <p>8        MR. LIU: Objection. Form.</p> <p>9        THE WITNESS: The e-mail may not      10       have necessarily said approved. It would have      11       been a template request for additional funds      12       related to a new request or a new need outside      13       of the funding currently available.</p> <p>14       BY MS. GOODMAN:</p> <p>15       Q. And Ms. Vélez made those requests      16       for additional funding to whom?</p> <p>17       MR. LIU: Objection. Form and      18       foundation.</p> <p>19       THE WITNESS: They would have been      20       made to the decennial division of the decennial      21       budget office.</p> <p>22       BY MS. GOODMAN:</p>	<p>1        anytime additional funds were added, yes.</p> <p>2        BY MS. GOODMAN:</p> <p>3        Q. Okay. And that differed from how      4        you dealt with it on Order 15 with these media      5        authorization forms; is that accurate?</p> <p>6        MR. LIU: Objection. Form.</p> <p>7        THE WITNESS: Two different things.      8        Media authorization forms can only be signed if      9        the funds are already on the order. If      10       additional funds were requested to be added to      11       the order, we would follow the process      12       previously described.</p> <p>13       BY MS. GOODMAN:</p> <p>14       Q. Okay. And so with respect to      15       Order 8, what way was moneys -- strike that.      16       For when there are funds already on      17       Order 8, how, if at all, was the purchase of      18       media authorized?</p> <p>19       MR. LIU: Objection. Form.</p> <p>20       THE WITNESS: You'd have to look at      21       where the funds were. There are contract line      22       item numbers or CLINs, C-L-I-Ns, in the chart</p>
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<p>1        Q. Are they made to the contracting      2        officer under the master contract?</p> <p>3        A. The contracting officer -- so when      4        additional requests for funding -- once the      5        funding has been approved, then a requisition      6        is then submitted to the acquisitions division,      7        along with the request to modify the contract      8        to add additional work.</p> <p>9        Once that is done, then the      10       contracting officer reviews all of that, looks      11       at a price in a technical proposal as provided      12       by Y&amp;R, and then a new modification is drafted      13       and signed by acquisitions, the contracting      14       officer and a representative from Y&amp;R.</p> <p>15       Q. The process which you just described      16       resulting in contract modifications for      17       Order 8, did that process happen each time that      18       the Order 8 -- the folks responsible for      19       Order 8 on a day-to-day basis requested      20       additional funds?</p> <p>21       MR. LIU: Objection. Form.</p> <p>22       THE WITNESS: That process --</p>	<p>1        in every order -- in every modification on      2        Order 8. You have funds that are -- I have to      3        look at a model for Order 8, but you have funds      4        that are specific to labor, you have funds that      5        are specific to the web page. You have funds      6        that are -- development of creative materials      7        so Order 8 was -- they had a lot of optional      8        CLINs listed in the original contract for      9        Order 8.</p> <p>10       Because at the time, the order was      11       initiated, originally signed, there were not      12       funds allocated for every CLIN which is why you      13       have modifications to enact a CLIN or to add      14       money to an existing CLIN.</p> <p>15       BY MS. GOODMAN:</p> <p>16       Q. So for Order 8, once there was a      17       CLIN line item for the purchase of national      18       paid media, is that CLIN line item the thing      19       that provides the contractor with authority to      20       go out and purchase paid media for Order 8?</p> <p>21       MR. LIU: Objection. Form.</p> <p>22       Foundation.</p>

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<p>1           THE WITNESS: With Order 8, it would      2 have to be a signed modification based upon the      3 request to add funds for a specific activity      4 within that CLIN.</p> <p>5           BY MS. GOODMAN:</p> <p>6           Q. And so once there is a signed      7 modification, I should look at the signed      8 modifications to figure out what authority was      9 given to the contractor to go out and purchase      10 media; is that accurate?</p> <p>11          MR. LIU: Objection. Form and      12 foundation.</p> <p>13          THE WITNESS: It would -- yes, to      14 some extent, yes.</p> <p>15          BY MS. GOODMAN:</p> <p>16          Q. Okay. I am handing you what's been      17 previously marked as Exhibit 27,      18 CENSUS-ADS-710075.</p> <p>19          This is an e-mail thread between      20 yourself and the Office of Inspector General at      21 the Department of Commerce, correct?</p> <p>22          A. Correct.</p>	<p>1 money between media types if opportunities      2 became available as long as the total spend did      3 not exceed the amount authorized on the actual      4 MAF."</p> <p>5           That was an accurate statement,      6 correct?</p> <p>7           MR. LIU: Objection. Form.</p> <p>8           THE WITNESS: It's an accurate      9 statement but it's a little out of context.</p> <p>10          So they did not have the authority      11 to just move money as they felt they needed --      12 they wanted to move money. They had to consult      13 with the census bureau, if they decided that it      14 was within the MAF, within a specific media      15 category, either they were unable to spend the      16 allocated amount or they felt a better      17 opportunity was -- was to reach that particular      18 audience was available.</p> <p>19          Then they would discuss it with the      20 census bureau. At which point, the census      21 bureau would approve or disapprove and as long      22 as it was within the amount -- it did not</p>
<p>1           Q. And you attach in this e-mail, all      2 -- screen shots of all of the media      3 authorization forms that were signed in the      4 course of Order 15, correct?</p> <p>5          A. Correct.</p> <p>6          Q. And if you look at page ending in      7 76, under Item 2 at the top of the page, you      8 see where Ms. -- well, somebody from the OIG's      9 office poses the question to you in No. 2,      10 beginning in the pizza box MAF.</p> <p>11          Do you see that?</p> <p>12          A. Yes.</p> <p>13          Q. And you write in response with the      14 bold text, just under that question; is that      15 accurate?</p> <p>16          A. That's accurate.</p> <p>17          Q. Okay. And you reported accurately      18 to the Office of Inspector General that: "The      19 MAF only provides authorization to spend the      20 total amount listed on the document and even      21 though there is funding listed for each media      22 type, the agency had authority to move that</p>	<p>1           exceed the amount of the MAF, then they could      2 go ahead and proceed with that purchase without      3 any further documentation.</p> <p>4           BY MS. GOODMAN:</p> <p>5          Q. But you didn't write all of that in      6 your e-mail to the OIG, correct?</p> <p>7          A. No, because we spoke almost every      8 day.</p> <p>9          Q. And media authorization forms      10 provide an authorization to expend money in a      11 specific media category, correct?</p> <p>12          MR. LIU: Objection. Form.</p> <p>13          THE WITNESS: Media authorization      14 forms list a multitude of media categories for      15 a particular audience, and it -- based upon the      16 media plan that was approved, it provides the      17 authority to spend up to that amount for that      18 particular vendor.</p> <p>19          BY MS. GOODMAN:</p> <p>20          Q. When you say "that particular      21 vendor," you mean that particular subcontractor      22 going out and purchasing media, correct?</p>

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1	A. Yes.	1 347583.
2	Q. And the media authorization forms do	2 Well, before we get there, the
3	not provide an authorization to spend money	3 invoice is from Y&R to the bureau of census,
4	with any specific vendor, correct?	4 correct?
5	MR. LIU: Objection. Form.	5 A. Correct.
6	THE WITNESS: Correct.	6 Q. And it includes a variety of
7	BY MS. GOODMAN:	7 invoices within it from WaveMaker to Y&R,
8	Q. And the census bureau does not	8 correct?
9	direct the subcontractors to use a specific	9 MR. LIU: Objection to form.
10	vendor, correct?	10 THE WITNESS: WaveMaker Puerto Rico,
11	MR. LIU: Objection. Form.	11 yes.
12	Foundation.	12 BY MS. GOODMAN:
13	THE WITNESS: Correct.	13 Q. Okay. Now looking at page ending in
14	BY MS. GOODMAN:	14 583, this is a purchase order from Y&R to
15	Q. Okay. And the census bureau does	15 WaveMaker Puerto Rico dated December 6 of 2019,
16	not tie the subcontractors' hands specifically	16 correct?
17	by requiring the subcontractor to use Google,	17 A. Correct.
18	correct?	18 MR. LIU: Objection. Form.
19	MR. LIU: Objection. Form and	19 THE WITNESS: Correct.
20	foundation.	20 BY MS. GOODMAN:
21	THE WITNESS: Correct.	21 Q. And this purchase order is for
22	MS. GOODMAN: Let's take a break.	22 2 point -- \$2,278,130, correct?
	Page 63	Page 65
1	That's okay?	1 A. Correct.
2	THE VIDEOGRAPHER: The time is	2 Q. And if you turn to -- ending in 585,
3	a.m. This ends Unit 1. We are off the record.	3 just one other page, this includes Y&R's
4	(A short recess was taken.)	4 additional contract terms for this purchase
5	THE VIDEOGRAPHER: The time is	5 order that it issued to WaveMaker Puerto Rico,
6	a.m. This begins Unit 2. We are on the	6 correct?
7	record.	7 MR. LIU: Objection. Form.
8	BY MS. GOODMAN:	8 Foundation.
9	Q. Ms. Oliphant, I am handing you	9 THE WITNESS: That's what it appears
10	Exhibit 149, CENSUS-ADS-347549.	10 to contain.
11	(Deposition Exhibit 149 was marked	11 BY MS. GOODMAN:
12	for identification.)	12 Q. And if you look in the column on the
13	BY MS. GOODMAN:	13 left-hand side under: "Assignment confirmation
14	Q. And this is an invoice for the	14 and license," do you see where I am?
15	purchase of paid media for Order 15, correct?	15 A. Yes.
16	A. Correct.	16 Q. And it says: "Y&R New York is
17	Q. Okay. And you certified that to the	17 acting as agent for the above-named client."
18	best of your knowledge and belief, the services	18 The client -- client in quotations.
19	supplied shown on the invoice have been	19 Then it says: "You are acting as an
20	performed/furnished and are accepted, correct?	20 independent contractor and the works you submit
21	A. Correct.	21 are specifically commissioned for, but not
22	Q. And let's look at page ending in	22 limited to" including -- "inclusion in

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1 advertising and/or commercial materials."	1 What does that mean?
2 Did I read that correctly?	2 MR. LIU: Objection. Form.
3 A. Correct.	3 Foundation.
4 Q. And this contract term says that:	4 THE WITNESS: So media purchases
5 "WaveMaker is an independent contractor."	5 were -- there was no markup on media. That
6 Is that how you -- how the census	6 meant the agency could not earn any commission
7 bureau understands this term?	7 and they would have to take out any commission
8 MR. LIU: Objection. Form.	8 -- they could not bill the government for any
9 Foundation. Calls for a legal conclusion.	9 commission they earned or that was included,
10 THE WITNESS: The census bureau sees	10 period.
11 WaveMaker and WaveMaker Puerto Rico as	11 BY MS. GOODMAN:
12 subcontractors to Y&R. We have no privy into	12 Q. And -- so does this invoice from
13 their contracts with their subcontractors, and	13 WaveMaker to Y&R for paid search in the amount
14 if Y&R calls them independent contractors,	14 of -- in the gross amount of \$828.55, does that
15 that's between Y&R and that particular vendor.	15 gross amount include a commission that Google
16 BY MS. GOODMAN:	16 invoiced to WaveMaker?
17 Q. And this is -- you understand that	17 MR. LIU: Objection. Form and
18 this purchase order is a contract between Y&R	18 foundation.
19 and WaveMaker Puerto Rico, correct?	19 THE WITNESS: It would be my
20 MR. LIU: Objection. Form and	20 assumption, but I don't know. I do know that
21 foundation.	21 the agency commission was removed and when you
22 THE WITNESS: Yes.	22 go back to the page ending in 551 and you look
Page 67	Page 69
1 BY MS. GOODMAN:	1 at that particular invoice number, the amount
2 Q. Okay. And if you look at the next	2 invoiced to the census bureau was the subtotal
3 page ending in 586, this purchase order from	3 of \$704.27.
4 Y&R to WaveMaker Puerto Rico authorizes or asks	4 BY MS. GOODMAN:
5 WaveMaker to purchase the categories of	5 Q. And you are looking at the invoice
6 advertising listed in Table 1 up to the amounts	6 date 8-20-2020 for 704.27 on page ending 551?
7 listed in the second column; is that accurate?	7 A. Yes, I am.
8 MR. LIU: Objection. Form.	8 Q. Okay. And that invoice date is the
9 THE WITNESS: That is accurate.	9 date that WaveMaker invoiced Y&R, correct?
10 BY MS. GOODMAN:	10 A. That is the date that matches the --
11 Q. And then if we go to the next page	11 the date on the invoice that we were discussing
12 ending in 587, you see that this is an invoice	12 on page number ending in 587.
13 from WaveMaker Puerto Rico to Y&R, correct?	13 Q. And that's the date of the invoice
14 A. Correct.	14 from WaveMaker to Y&R?
15 Q. And this is an invoice for paid	15 A. Yes.
16 search where you see campaign name, correct?	16 Q. And the issue date from Google
17 A. Correct.	17 vendor invoice is April 1 of 2020, correct?
18 Q. And the invoice total, the gross	18 MR. LIU: Objection. Form.
19 total is \$828.55, correct?	19 Foundation.
20 A. Correct.	20 THE WITNESS: That is what it
21 Q. And then there is a "less agency	21 appears, yes.
22 commission."	22 BY MS. GOODMAN:

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<p>1 Q. And did you review the invoice -- 2 strike that.</p> <p>3 Did the census bureau review the 4 invoice from Google to WaveMaker in the amount 5 of \$828.55?</p> <p>6 MR. LIU: Objection. Form.</p> <p>7 THE WITNESS: Yes, we did.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. And was that part of the backup that 10 was posted on Y&amp;R's Egnyte site?</p> <p>11 A. Yes.</p> <p>12 Q. Does the census bureau have copies 13 of the media -- of the media vendors invoices 14 that were posted by Y&amp;R on their Egnyte site?</p> <p>15 MR. LIU: Objection. Form.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Why not?</p> <p>19 A. Voluminous. It was a lot of backup. 20 We spoke with our acquisitions division to ask 21 if we needed to keep that, if we needed to 22 download it to our system and they said no.</p>	<p>1 Q. Are you aware of any -- is the 2 census bureau aware of any way it can determine 3 how many clicks or impressions were obtained 4 through this particular invoice that we are 5 looking at on page ending 587, outside of the 6 census bureau's own documentation?</p> <p>7 MR. LIU: Objection. Form.</p> <p>8 Foundation.</p> <p>9 THE WITNESS: We would have to go 10 back to WaveMaker and request that information. 11 That would be the only place -- it would be -- 12 well, Y&amp;R, it would be on their site.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. To your -- has the census bureau 15 gone back and done, made that request of Y&amp;R 16 for purposes of this lawsuit?</p> <p>17 MR. LIU: Objection. Privileged. Attorney-client communications and attorney work product. To the extent that your answer would not rely on -- I would not divulge attorney-client communications or directions from attorneys, you may answer, but if it would</p>
<p>1 Q. So sitting here today, three years 2 after the 2020 census, do you have any way of 3 determining -- does the census bureau have any 4 way of determining what was invoiced, at least 5 on this invoice here, page ending in 587, from 6 Google to WaveMaker?</p> <p>7 MR. LIU: Objection. Form.</p> <p>8 Foundation.</p> <p>9 THE WITNESS: No, we do not, but the 10 simple fact that I signed the invoice is a 11 clear indication that the backup documentation 12 was sufficient to justify the invoice.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And does the census bureau have a 15 way to determine how many clicks or impressions 16 were obtained through this \$828.55 invoice 17 amount?</p> <p>18 MR. LIU: Objection. Form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: Not using their own documentation, no.</p> <p>21 BY MS. GOODMAN:</p>	<p>1 divulge those communications or directions, I 2 would instruct you not to answer.</p> <p>3 THE WITNESS: I have no answer. I 4 am -- I am unaware.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. You don't know if the census bureau 7 has gone to Y&amp;R to request all the backup 8 documentation.</p> <p>9 Am I understanding your testimony 10 correctly?</p> <p>11 MR. LIU: Objection. Form.</p> <p>12 THE WITNESS: The census bureau has 13 not specifically requested backup documentation 14 from Y&amp;R, no.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. Let's turn to the page ending 17 in 632.</p> <p>18 This is an invoice from WaveMaker to 19 Y&amp;R for a Google ad tech fee, correct?</p> <p>20 A. Correct.</p> <p>21 Q. What is a Google ad tech fee?</p> <p>22 MR. LIU: Objection. Form.</p>

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1 they used anything other than that, it would be 2 in violation of that particular contract.  3 MR. LIU: Thank you. No further 4 questions.  5 MS. GOODMAN: Off the record.  6 THE VIDEOGRAPHER: The time is 7 a.m. We are off the record.  8 (Pause.)  9 THE VIDEOGRAPHER: The time is 10 a.m. We're on the record.  11 MS. GOODMAN: I think we were on the 12 record for 1 hour, 59 minutes, yes?  13 THE VIDEOGRAPHER: Yes.  14 MS. GOODMAN: Okay. Off the record.  15 THE VIDEOGRAPHER: The time is 16 a.m. We're off the record.  17 (Whereupon, the proceeding was 18 concluded at 11:56 a.m.)  19 20 21 22	Page 110  1 MARTHA L. GOODMAN, ESQUIRE 2 mgoodman@paulweiss.com 3 September 28, 2023 4 RE: United States, Et Al v. Google, LLC 5 9/27/2023, Kendall Oliphant (#6097939) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 erratas-cs@veritext.com. 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25
1 2 CERTIFICATE OF NOTARY PUBLIC 3 I, Bonnie L. Russo, the officer before 4 whom the foregoing deposition was taken, do 5 hereby certify that the witness whose testimony 6 appears in the foregoing deposition was duly 7 sworn by me; that the testimony of said witness 8 was taken by me in shorthand and thereafter 9 reduced to computerized transcription under my 10 direction; that said deposition is a true 11 record of the testimony given by said witness; 12 that I am neither counsel for, related to, nor 13 employed by any of the parties to the action in 14 which this deposition was taken; and further, 15 that I am not a relative or employee of any 16 attorney or counsel employed by the parties 17 hereto, nor financially or otherwise interested 18 in the outcome of the action.  19 20 21 22 23 24 25  <i>Bonnie L. Russo</i> Notary Public in and for the District of Columbia My Commission expires: August 14, 2025	Page 111  1 United States, Et Al v. Google, LLC 2 Kendall Oliphant (#6097939) 3 E R R A T A S H E E T 4 PAGE ____ LINE ____ CHANGE _____ 5 _____ 6 REASON _____ 7 PAGE ____ LINE ____ CHANGE _____ 8 _____ 9 REASON _____ 10 PAGE ____ LINE ____ CHANGE _____ 11 _____ 12 REASON _____ 13 PAGE ____ LINE ____ CHANGE _____ 14 _____ 15 REASON _____ 16 PAGE ____ LINE ____ CHANGE _____ 17 _____ 18 REASON _____ 19 PAGE ____ LINE ____ CHANGE _____ 20 _____ 21 REASON _____ 22 _____ 23 _____ 24 Kendall Oliphant Date 25

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